

General Terms and Conditions - Gebrüder Weiss GmbH

1. Definitions

- „Barge“ means any vessel used for inland waterway legs and may include all floating units of a pushed or towed convoy.
- „Bill of Lading“ means any bill of lading, waybill or other similar transport document issued in connection with the Contract of Carriage.
- „Carrier“ means Gebrüder Weiss GmbH, Am Sandtorkai 74, 20457 Hamburg, Germany.
- „Container“ includes any container (including open top and tanks), flat rack, and any other similar article used to consolidate the Goods.
- „Contract of Carriage“ means the contract between the Carrier and the Contractual Shipper governed by these General Terms and Conditions.
- „Contractual Shipper“ means the Person (potentially other than the Shipper named in a Bill of Lading) entering into the Contract of Carriage.
- „Goods“ means the whole or any part of the cargo received from the Shipper and includes any equipment or Container not supplied by or on behalf of the Carrier.
- „HGB“ means the German Commercial Code.
- „Merchant“ means and includes the Contractual Shipper, the Documentary Shipper, the Consignee, the holder of a Bill of Lading as well as the receiver and the owner of the Goods.
- „Person“ includes an individual, corporation or other legal entity.
- „Physical Loss“ means loss of or damage to Goods in connection with transport services provided by the Carrier.
- „SDR“ means a Special Drawing Right defined by the IMF.
- „Vessel“ means each Vessel used for the transport of the Goods, including the main line or feeder vessels.

2. [intentionally omitted]

3. Dangerous Goods

3.1 The Merchant shall comply with all applicable laws and regulations relating to the shipment of Goods of a dangerous nature, and shall in any case inform the Carrier in writing of the exact nature of the danger and of any precautions to be taken before entering into the Contract of Carriage, and in any event before such Goods are taken in charge by the Carrier. Such Goods shall be properly marked on the outside of the Container or break bulk package.

3.2 If Goods of a dangerous nature have been handed over for transport without proper and correct information and markings, the Carrier shall be entitled to unload such goods at any place, and to have them destroyed or rendered harmless as circumstances may require, always for the account of the Merchant and without any compensation for the value of the goods.

3.3 If any Goods become a danger to life or property they may be unloaded or landed at any place or destroyed or rendered harmless. If such danger was not caused by fault of the Carrier, he shall be exempted from any liability and the Merchant shall indemnify him against all loss damage liability and expenses arising therefrom.

4. Description of Goods, Shipper's Packing, Inspection

4.1 The Merchant shall be deemed to have guaranteed to the Carrier the accuracy at the time the Goods were taken in charge by the Carrier of all particulars relating to the general nature of the Goods, their marks, number, weight, volume and quantity and, if applicable, to the dangerous character of the Goods as furnished by him or his behalf for insertion on a Bill of Lading.

4.2 The Carrier shall not be liable for any loss, damage or expense caused by defective or insufficient packing of Goods or by inadequate loading or packing within Containers or other transport units when such loading or packing has been performed by the Merchant or by a Person other than the Carrier or by the defect or unsuitability of the Containers or other transport units supplied by the Merchant.

4.3 The Shipper shall duly inspect Containers supplied by the carrier and shall not pack those Containers unless they are found suitable for the transport of the particular Goods.

4.4 In cases where the Goods are provided to the Carrier in packed Containers, the Contractual Shipper shall provide the Carrier with the verified gross mass of the Container obtained in accordance with ch. VI, part A, reg. 2 of SOLAS and the laws and regulations applicable at the Port of loading, using the Carrier's standard format for such declaration, latest within the deadline indicated by the Carrier in advance. Failure to comply may cause substantial loss, including without limitation dead freight, demurrage, detention, storage or weighing fees.

4.5 The Merchant shall indemnify, hold harmless and defend the Carrier, his servants and agents and any third party for all loss, damage, delay, personal injury, death or expenses including fines and penalties and all legal expenses caused to the Carrier, the Vessel, any cargo and other property, arising from dangerous goods and/or from any breach of Cl. 3.1, 4.1, 4.2, 4.3 an/or 4.4, whether or not the Merchant acted with neglect, bad intent or any other type of fault.

5. Carrier's Liability

5.1 The following applies to Physical Loss if the scope of the Contract of Carriage regarding carriage of goods is limited to an ocean transport:

a) When Goods have been lost or damaged between the time of loading on and discharging from the Vessel, Carrier's liability shall be limited to the higher of two (2) SDR per kg of the gross weight or 666.67 per package, in accordance with §§ 498 et seq. HGB.

b) The Carrier shall not be liable for any fault of his personnel or of the Vessel's crew (§ 478 HGB) in cases of damage or loss caused by fire or explosion on board the Vessel or caused by the navigation or management of the Vessel, in the latter case save for damage or loss caused when executing measures which were predominantly taken in the interest of the Goods.

c) The Carrier shall not be liable for damage or loss caused by the fault of another Person involved in the navigation or management of the Vessel, in particular pilots on board of the Vessel or the crew of a tug boat assisting the Vessel, save when executing measures which were predominantly taken in the interest of the Goods.

d) The Carrier shall not be liable for acts or omissions of a terminal operator or other shore personnel to which the Goods were submitted by the Merchant or which was otherwise chosen by the Merchant.

5.2 The following applies to Physical Loss if the scope of the Contract of Carriage includes a multimodal transport:

a) If Physical Loss occurred during an ocean transport leg, the provisions in Cl. 5.1 shall apply.

b) If Physical Loss occurred during any other leg of transport, the law applicable to such leg of transport shall apply, subject to limitation under Sub-Cl. e) below.

c) Subject to Cl. 5.4 g) below, if Physical Loss occurred during an inland waterway leg, the Carrier shall not be liable for Physical Loss arising from either of the following: (i) acts or omissions in the navigation of the Barge (incl. forming/dissolving a convoy), whether committed by the master, the pilot or any other person in the service of the Barge, always provided that the Barge was properly manned, and unless the act or omission was made with the intention to cause damage or recklessly with the knowledge that loss would probably result; (ii) fire or an explosion on board the Barge, unless such event resulted from a fault of the Carrier, the actual carrier, or their employees or agents, or from a defect of the Barge; (iii) defects of the Barge existing prior to beginning of the voyage, provided that such defects could not have been detected, when acting diligently, at that time.

d) If it cannot be established during which leg of transport Physical Loss has occurred, the Carrier's liability shall be determined in accordance with §§ 425 et seq. HGB, subject to limitation under Sub-Cl. e) below.

e) Except for cases governed by Sub-Cl. a) above and subject to Cl. 5.4 g) below, the maximum amount to which the Carrier's liability is limited shall be two (2) SDR per kg of the gross weight, which is less than the limitation amount stipulated in § 431 HGB. Applicable statutory provisions providing for an unlimited liability under specific circumstances shall remain unaffected.

5.3 Delay

a) Unless expressly agreed, Carrier does not undertake that the Goods shall arrive at the port of discharge or place of delivery at any particular time, or to meet any particular market or use of the Goods, or to meet any particular requirement under any licence, authorization, contract, or credit of the Merchant. The Carrier shall not be liable for any direct, indirect or consequential loss or damage caused by delay.

b) If Carrier will nevertheless be considered liable for loss resulting from delay, such liability shall not exceed three (3) times the freight.

c) Sub-Cl. b) shall not apply if the delay was caused by the Carrier or his servants or agents with the intention to cause damage, or recklessly with the knowledge that damage would probably result.

5.4 General provisions

a) Save as otherwise provided herein, the Carrier shall in no circumstances whatsoever and howsoever arising be liable for direct or indirect or consequential loss or damage or loss of business or profits.

b) If the Carrier should nevertheless be considered liable for losses or damages other than for Physical Loss or delay, and provided that those do not result from personal injury, the Carrier's liability shall be limited to three (3) times the amount to which the Carrier's liability for loss of the Goods would have been limited, except in cases where the conditions in Cl. 5.3 c) are met.

c) The Merchant agrees that the Carrier qualifies as a charterer entitled to limit liability under the LLMC or any other comparable international convention or national legislation on the limitation of liability for maritime claims applicable in the relevant jurisdiction.

d) These terms and conditions apply to all claims against the Carrier relating to a Bill of Lading and / or the performance of the Contract of Carriage, whether founded in contract or being of a non-contractual nature.

e) If a Container has not been packed by the Carrier, the Carrier shall not be liable for Physical Loss which has been caused by any matter beyond his control including, without limitation and without prejudice to the generality of this exclusion (i) the manner in which the Container has been packed, or (ii) the unsuitability of the Goods for carriage in Containers, or (iii) the unsuitability or defective condition of the Container, or (iv) the incorrect setting of any temperature controller, recorder or ventilation, provided that, if the Container has been supplied by the Carrier, this unsuitability or defective condition was apparent upon reasonable inspection by the Shipper at or prior to the time the Container was packed.

f) The Carrier shall, unless otherwise expressly agreed, be discharged of all liability under these conditions unless suit is brought within one (1) year after the delivery of the Goods, or date when the Goods should have been delivered.

g) These terms and conditions shall not apply to the extent that they are contrary to provisions of the applicable legislation (including international conventions, such as CMR) which are mandatory or cannot be altered in general terms and conditions.

6. US COGSA, Hague-Visby-Rules

In the event that suit is brought against the Carrier in a venue different from the one agreed in Cl. 15 and that Cl. 15 is not applied and enforced in that venue, the Contract of Carriage shall be subject to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 as amended by the Protocols of 1968 and 1979, unless the relevant proceedings are pending in the USA, in which case the Carriage of Goods by Sea Act as defined in the federal law of the USA („US COGSA“) shall apply. In all cases where the Carrier's liability is governed by US COGSA, the following applies: (i) The Carrier's liability shall not exceed US\$ 500 per package, or, in case of Goods not shipped in packages, per customary freight unit. (ii) The limitations of liability provided therein or in this document apply unless the nature and value of the Goods have been declared by Merchant prior to shipment and inserted in a Bill of Lading and the ad valorem freight rate was paid if required; in that event, the limitation amount shall not exceed the declared value, and nothing herein shall be construed as a waiver of limitation. (iii) US COGSA shall also apply during all times before loading and after discharging of the Goods from the Vessel, and shall also apply to Goods carried on deck and to live animals.

7. Subcontracting and Liability of Servants and other Persons

7.1 The Carrier shall be entitled to sub-contract the whole or any part of the carriage on any terms.

7.2 No agents and servants (including subcontractors) of the Carrier shall under any circumstances be under any liability whatsoever to the Merchant for any loss, damage or delay whether arising or resulting directly or indirectly from any act, neglect or default on the subcontractor's part. The Merchant undertakes that no claim or allegation, whether in contract, bailment, non-contractual, or otherwise, shall be made against any subcontractor seeking to impose any liability whatsoever in connection with the Contract of Carriage.

7.3 Notwithstanding Cl. 7.2, any claims made by the Merchant against any agents and servants (including subcontractors) whose services have been used in order to perform the Contract of Carriage shall be subject to these terms and conditions, and limitations of the Carrier's liability shall extend to any such defendants.

8. Method and Route of Transportation, Reefers

8.1 The Shipper shall inspect any Containers obtained from the Carrier before packing them and is responsible for the packing and sealing of all shipper packed Containers. The fact that the Shipper packed a Container shall be prima facie evidence of such Container being sound and suitable for use.

8.2 Without notice to the Merchant the Carrier has the liberty to carry the Goods on or under deck and to choose, change and/or substitute the means, route and procedure to be followed in the handling, stowage, storage and transportation of the Goods. Transshipment is permissible.

8.3 The Contractual Shipper undertakes to procure that no Goods requiring temperature control will be tendered for carriage without an advance notice in writing to the Carrier detailing their nature and the intended temperature range (to be indicated in a Bill of Lading). The term "apparent good order and condition" does not mean that the Goods, when received, were verified by Carrier as being within the indicated temperature range. If the Carrier has agreed to perform a temperature controlled transport, his duties are limited to providing a suitable reefer unit (unless shippers' owned Containers are to be used) and to provide energy to the reefer and monitor the reefer in a manner which corresponds to good market practice on the respective trade. The Carrier is unable to guarantee any temperature levels inside a reefer unit, which strongly depend on the condition of the Goods on packing and on proper stowing of the reefer. Even where all those conditions are met, the Carrier does not undertake that the reefer unit will keep the temperature constantly in the indicated range; exceedance or shortfall of up to 2.5°C is within specification.

9. Delivery, Obstacles, Hindrances, Redelivery

9.1 Neither Carrier nor any of his servants or agents are obliged to inform the Merchant of the Vessel's estimated or actual date or time of arrival, and if given, such information shall be considered gratuitous.

9.2 After discharge of the Goods, Carrier shall not be responsible for any claims, loss, liability, penalties, damage, delay, fines, attorney fees, costs, and/or expenses, either arising out of the Goods being in the custody of customs or other authority and/or in the event the Goods are improperly released or delivered by customs or other authority to a third party without the consent of Carrier. Goods shall be deemed to be delivered at handing over to any authority or other party to whom, pursuant to the laws and regulations applicable at the place of delivery, the Goods must be handed over.

9.4 If the Goods are not picked up upon arrival at destination, the Carrier shall be entitled to store the Goods at the sole risk and cost of the Merchant, whereby the Carrier's liability shall cease.

9.5 If at any time the carriage is or is likely to be affected by any hindrance or risk of any kind (including the condition of the Goods) not arising from any fault or neglect of the Carrier or any of his agents and servants (including subcontractors) and which cannot be avoided by the exercise of reasonable endeavours, the Carrier may abandon the carriage of the Goods and, where reasonably possible, may place the Goods or any part of them at the Merchant's disposal at any place which Carrier may deem safe and convenient, whereupon delivery shall be deemed to have been made, and the responsibility of the Carrier in respect of such Goods shall cease. In any event, shall the Carrier be entitled to full freight and the Merchant shall pay any additional costs resulting from the above mentioned circumstances.

9.6 Notice of any Physical Loss shall be made to the Carrier or his agent in writing at the time of delivery to the Consignee or his agent, giving a reasonable description of the general nature of such loss or damage. Where such Physical Loss was not apparent on delivery, such notice needs to be made not later than three (3) days thereafter. Failure to give a proper notice in time entails the presumption that the Goods were delivered in good order as described in a Bill of Lading.

9.7 Unless on-carriage is made in Carrier's haulage, any equipment supplied by or on behalf of the Carrier shall be returned by the Consignee in the same condition as received on delivery at the agreed place, or, where no place has been agreed, at a place reasonably determined by the Carrier. Prior to such transport, the Carrier is entitled to change this place by giving notice to the Consignee, provided that this new place lies within a radius of 100km from the place originally agreed or determined.

10. Freight, Charges, Tariff

10.1 Freight, whether prepaid or payable at destination, shall be paid without any reduction, counterclaim or set-off, unless such counterclaim is undisputed or has been confirmed in a final and binding decision of a competent court. Freight shall be earned when the Goods have been taken in his charge by the Carrier.

10.2 Freight and all other amounts due hereunder are to be paid in the currency indicated herein or, at the Carrier's option, in the currency of the country of dispatch or destination.

10.3 All dues, taxes and charges or other expenses made on behalf of the Carrier for the Goods shall be reimbursed by the Merchant.

10.4 The Merchant shall reimburse the Carrier in proportion to the amount of freight for any costs for deviation or delay or any other increase of cost of whatever nature caused by war, warlike operations, epidemics, strikes, government directions or force majeure.

10.5 The acceptance by the Carrier of instructions to collect freight or other charges or expenses from any Person other than the Contractual Shipper, and/or any assumption of liability by any Person, shall not exempt the Contractual Shipper from his liability.

10.6 The Contractual Shipper and the Shipper named in a Bill of Lading shall reimburse the Carrier for any demurrage, detention, storage and other expenses made as a result of acts or omissions of the Consignee, the Contractual Shipper and/or the Shipper named in the Bill of Lading. Nevertheless, the Carrier shall be entitled to collect such amounts from the Consignee.

10.7 If the Carrier has a tariff applicable hereto, such tariff shall be fully incorporated herein. Otherwise, the relevant tariff of the Carrier's subcontractor applies.

11. Lien on the Goods

The Carrier shall have a lien on Goods and any documents relating thereto for all sums due under the Contract of Carriage (including, but not limited, recovery claims for expenses made or liabilities incurred with respect to the Goods in general average and/or salvage). Such lien may be enforced by the Carrier by public or private sale at the expense of and without notice to the Merchant.

12. General Average, Collision

12.1 General average to be adjusted at any port or place at the Carrier's option and to be settled according to the York Antwerp Rules 1994, this covering all Goods carried on or under deck.

12.2 Where Bills of Ladings are issued for a less than Container load shipment, the Carrier is entitled but not obliged to put up security for general average and/or salvage claims against the owners of the Goods. If the Carrier provides security, the Contractual Shipper shall procure that the owners of the Goods will provide – in exchange for delivery of the Goods – security to the Carrier on reasonable terms ensuring that the Carrier will be indemnified in case the security provided by the Carrier will be called.

12.3 The current BIMCO Both-to-Blame Collision Clause is hereby incorporated into these General Terms and Conditions. A copy is available from the Carrier upon request.

13. Partial Invalidity

If any provision in these General Terms and Conditions is held to be invalid or unenforceable by any competent court or authority, such invalidity or unenforceability shall only affect the particular provision. The validity of the remaining provisions shall not be affected and the Contract of Carriage shall be carried out as if such invalid or unenforceable provision was not contained herein.

14. Supplemental Terms and Conditions Applicable

If and to the extent that the scope of the Contract of Carriage includes – partly or only – other services than transportation services and usual additional services being ancillary to transportation (together "Transportation Services"), the above Clauses 3 to 13 shall only apply to Transportation Services, if any. All other aspects of the Contract of Carriage shall be subject to and governed by the "German Forwarders' Standard Terms and Conditions 2017" (ADSp 2017), or, if and to the extent that the Contract of Carriage is also not falling in the scope of application of the ADSp 2017, the "General Terms and Conditions of Logistics-Services Providers" shall apply. Those terms and conditions are available at <https://www.gw-world.com/de-de/impressum/>.

15. Applicable Law, Jurisdiction

The Contract of Carriage shall be governed by German law. Any claim, dispute, suit or proceeding arising thereunder or in connection therewith shall be determined exclusively in the Hamburg courts. The Carrier shall also have the option to bring a suit against the Merchant in any court having jurisdiction regardless of this clause. In case of inconsistencies, this Clause shall supersede the provisions on applicable law and venue in other terms and conditions referred to in Cl. 14 above. To the extent that the applicable law provides for one or more venues which must not be derogated, the above agreement on place jurisdiction shall be construed as agreement for additional venues.

16. Miscellaneous Provisions Applicable to this Quotation

16.1 Any general terms and conditions used by the Merchant will not be accepted and shall therefore not be deemed to have been agreed upon, even to the extent such do not contradict with these general terms and conditions. Verbal collateral agreements are ineffective.

16.2 The Carrier is entitled to issue shipping documents, in particular bills of lading, air waybills etc.

16.3 The Carrier's duties resulting from this contractual relationship shall at any time be subject to the adherence to and compliance with national and international statutory provisions and/or mandatory requirements (in particular compliance with European and U.S. embargo measures). In case of a conflict between the contractual provisions and the statutory provisions and/or mandatory requirements, the statutory provisions and/or mandatory requirements shall prevail, even in cases of doubt. Without prejudice to the Carrier's rights under these terms and conditions, responsibility for compliance with foreign trade legislation (prohibitions and limitations with respect to import, export or transit) lies with the Merchant. The Carrier shall not be under an obligation to check that such legislations are complied with and responsibility to make us aware of any limitation or prohibition with respect to the goods to be shipped lies with the Merchant, who will inform the Carrier timely and in writing and indemnify him and hold him harmless. The Merchant shall also be obliged to guarantee the safety of the supply chain to the Carrier.

16.4 The following goods shall in particular be excluded from acceptance for transport and/or for storage: precious metals (uncoined, coined or processed in any other way), jewelry, gemstones, banknotes, securities of any type, documents or deeds, temperature-controlled pharmaceuticals, arms and munition, livestock as well as substances the storage of which is subject to special legal provisions (e.g. substances hazardous to water).

16.5 This quotation must be kept confidentially and may not be disclosed to any third party.

16.6 You can view our data protection information in accordance with Art. 13, 14 GDPR and our data protection declaration on our homepage (<https://www.gw-world.com/privacy-policy/>).